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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CTG FORENSICS, INC., Plaintiff and Respondent, v. STEVEN L. ZELIG et al., Defendants and Appellants.	G040626 (Super. Ct. No. 30-2008-00101155) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert D. Monarch, Judge. Affirmed.

Brentwood Legal Services and Steven L. Zelig, in pro. per., for Defendants and Appellants.

Law Offices of Douglas M. Vickery and Douglas M. Vickery for Plaintiff and Respondent.

Steven Zelig appeals from a judgment entered against him following a successful petition to confirm an arbitration award. Zelig argues the judgment cannot stand because he was not a party to the agreement containing the arbitration clause, and thus could not be either compelled to participate in the proceeding or bound by its result. He characterizes the issue before us as "whether or not an individual who has merely signed off on an agreement on behalf of a *disclosed corporate entity* suddenly gives up his right to a jury trial . . . without any process whatsoever." And if that were the question to be decided, we'd agree he has been wronged. However, contrary to what Zelig contends, his "disclosure" of the corporate status of "Steven L. Zelig and Associates" was far from clear, and thus the disputed issue of whether a reasonable party in CTG's position should have understood Zelig was signing its contract in a representative capacity must be resolved against him.

There are other complaints interspersed within Zelig's opening brief, mostly in the form of parenthetical "comments" sprinkled into his recitation of facts. However, none of those comments is developed into a full-blown argument, and thus we treat them as waived for purposes of appeal. The judgment is affirmed.

FACTS

CTG Forensics entered into a retainer agreement to provide services in connection with a litigation matter to "Steve Zelig & Associates," apparently a law firm, on July 22, 2005. The agreement was signed by Zelig on behalf of "Steve Zelig & Associates," and returned to CTG by fax, with a cover sheet bearing the name "Law Offices of Steven L. Zelig & Associates" at the top. Zelig paid CTG's $2,500 initial retainer with a check identified as having been drawn from the "Zelig & Associates, A Professional Legal Corporation General Account."

The parties thereafter had a falling out, and apparently Zelig declined to pay some portion of CTG's fee. Consequently, in or around August of 2007, CTG filed a demand for arbitration in accordance with the terms of the arbitration provision contained

in the retainer agreement.[1] The demand itself is not included in our record, and thus we cannot be sure how many iterations of Zelig's law firm name might have been included in the listing of respondents, along with Zelig himself.[2]

Zelig acknowledged receipt of the demand by letter dated August 8, 2007. In that letter, he dismissed CTG's fee claim as "fraudulent" and stated that "[i]f this matter goes any further, I will cross-complain for fraud in the performance and unfair business practices and will seek disgorgement of ill-gotten gains on behalf of similarly situated victims." He also stated a willingness to discuss settlement.

In October of 2007, Zelig sent CTG a letter acknowledging that he had received notice CTG was proceeding with the arbitration. He protested that he "d[id] not recognize them as having 'jurisdiction'" of "the American Arbitration Association," and suggested that if CTG wished to pursue an action, it should "file suit and . . . serve me." He stated that if CTG believed arbitration was appropriate under its "so-called agreement," it would have to "file a petition to compel arbitration." He copied the American Arbitration Association case manager on his letter.

The arbitration proceeded without the participation of either Zelig or any business entity related to him. At the conclusion of the proceeding, the arbitrator ruled that Zelig, the individual, would be treated as the sole respondent in the matter, and found against him on the merits.

The arbitrator issued fairly detailed findings of fact and conclusions of law relating to his decision to hold Zelig individually liable for performance of the retainer

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[1] The retainer provision states: "Any and all disputes, controversies or claims arising out of or relating to this Agreement shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be conducted by one arbitrator who shall be an attorney licensed to practice law in the State of California with at least fifteen (15) years of business law experience. The award of the arbitrator shall be in the form of findings of fact and conclusions of law. The arbitration shall take place in the County of Orange, State of California. The award of the arbitrator shall be final and non-appealable and may be entered as a final judgment in any court having jurisdiction thereof."

[2] A declaration filed by CTG's counsel in connection with the petition to confirm the arbitration award implies that the respondents named in the arbitration proceeding were "Steven L. Zelig, Steve Zelig, Steve Zelig & Associates, A Professional Corporation, and Zelig & Associates, A Professional Legal Corporation."

agreement. Among other things, the arbitrator found that: "1. CTG entered into a Retainer Agreement dated July 22, 2005 with Zelig which he signed on behalf of Steve Zelig & Associates. [¶] 2. Zelig's signature on page 2 of the Retainer Agreement does not indicate that he signed as a corporate officer or in any other capacity. [¶] 3. The signature block for Steve Zelig & Associates on the July 22, 2005 Retainer Agreement does not indicate that Steve Zelig & Associates is a corporation. [¶] 4. Steve L. Zelig, a Professional Corporation, is a suspended California corporation. [¶] 5. Zelig & Associates, A Professional Legal Corporation, is an active California corporation. [¶] 6. The July 22, 2005 Retainer Agreement was returned by Zelig with a Facsimile coversheet which states at the top '*Law Offices of Steven L. Zelig & Associates*' and does not indicate that it is a corporation. [¶] 7. The July 22, 2005 Retainer Agreement was returned by Zelig's office along with a check for $2,500.00 which states 'Zelig & Associates, A Professional Legal Corporation General Account.' [¶] 8. There are no fictitious business names filed on behalf of Zelig or any of his corporations with the Los Angeles Registrar-Recorder/County Clerk. [¶] . . . [¶] [and] 13. When Zelig signed the Retainer Agreement dated July 22, 2005 with CRG, he signed such Retainer Agreement in his individual capacity (not in his representative capacity) because he did not fully disclose the true name and status of any purported corporate (or other entity) principal nor did he disclose that he was acting solely as an agent for any purported corporate (or other entity) principal."

The arbitrator's conclusions of law included determinations that "7. Zelig was provided reasonable notice by AAA of these arbitration proceedings and a reasonable opportunity to respond. [¶] [and] 8. Zelig acknowledged in writing that he was aware of these arbitration proceedings and yet chose not to participate in these arbitration proceedings nor did he appear at the arbitration hearing."

CTG filed its petition to confirm the arbitration award on January 10, 2008. The petition alleges it seeks relief against Steven L. Zelig, Steve Zelig, Steve Zelig &

Associates, a Professional Corporation and Zelig & Associates, a Professional Legal Corporation. However, in an accompanying declaration, CTG's counsel stated it was seeking confirmation of the award against Steven L. Zelig, the individual only, and had listed the other names because it believed that Code of Civil Procedure[3] section 1285 requires inclusion of all parties named in the arbitration. CTG also filed a declaration of its counsel, seeking an award of attorney fees incurred to enforce the arbitration award.

Zelig responded with a request for dismissal of the petition against him individually, pursuant to section 1287.2, on the ground he is "not bound by the arbitration award and was not a party to the arbitration." (§ 1287.2.) He also cross-petitioned to vacate the award entirely, on the basis that an arbitration agreement is not "self-executing" and thus in the absence of a court order compelling arbitration pursuant to section 1281.2, no arbitration can proceed against any party that has objected.

The court refused to dismiss the confirmation petition as against Zelig individually, denied the cross-petition to vacate the award, and granted the petition to confirm. The court also apparently granted, in part, CTG's motion for post-arbitration attorney fees, although our record does not include any order of other document reflecting the resolution of that specific issue.[4]

I

We first address Zelig's contention the arbitration agreement is not "self-executing," and thus once he had asserted an objection to proceeding in an arbitral forum, CTG could not do so without first obtaining a court order compelling Zelig to submit. As explained in *Kustom Kraft Homes v. Leivenstein* (1971) 14 Cal.App.3d 805, a petition to compel arbitration is merely remedial; it is not a prerequisite to the validity of a contractual arbitration proceeding. (Cf. *Brink v. Allegro Builders, Inc.* (1962) 58 Cal. 2d

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3 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

4 We infer that the motion was granted in part, because CTG's motion for fees states that the total amount of the arbitrator's award was $31,123.50, and asks for an additional $8,068.42 in post-arbitration fees and costs, for a total of $39,191.92. The court ultimately awarded a total judgment of $35,329.89.

577.) If the terms of the arbitration agreement are sufficiently detailed to provide the parties with adequate notice of the procedures to be followed, that procedure may be initiated without the advance blessing of a court. "An arbitration agreement may be self-executing and its provisions may obviate the need to resort to statutory procedure. [Citation.] [¶] The arbitration clause [used by Kustom Kraft] . . . did import into the contract the entire scheme for arbitration as established by the rules of the American Arbitration Association. When those rules are read into the contract it then appears to us to be comprehensive enough to be self-executing." (*Kustom Kraft Homes v. Leivenstein, supra,* 14 Cal.App.3d at pp. 810-811.)

Here, just as in *Kustom Kraft,* the arbitration provision specified that the arbitration would be conducted in accordance with the rules of the American Arbitration Association (in this case, specifically "the Commercial Arbitration Rules of the American Arbitration Association then in effect"). In the absence of some evidence or argument demonstrating that the version of those rules in effect at the time of the arbitration herein is not sufficiently comprehensive to qualify as self-executing, we conclude the validity of the arbitration proceeding did not depend upon a prior court order compelling it.

II

Zelig next argues he was denied his right to due process generally, and specifically his right to a jury trial, because he never agreed to be bound by the retainer agreement – and thus to its arbitration clause – in his individual capacity. We disagree.

Initially, however, we must point out that CTG is incorrect in its assertion that the arbitrator's decision on the issue had some *preclusive* effect on the court. It is well-settled that only a court can determine whether a party resisting arbitration actually agreed to be bound by the provision. As explained in *Bruni v. Didion* (2008) 160 Cal.App.4th 1272, 1284, "'[t]here would . . . be a severe problem of bootstrapping'" if a party could be forced to arbitrate the issue of whether he had agreed to arbitration. (Quoting *Matterhorn, Inc. v. NCR Corp*. (7th Cir.1985) 763 F.2d 866, 869.) "In these

summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination. [Citation.]" (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.)

While section 1280, subdivision (e), gives the arbitrator the authority to "determine" who is a party to the arbitration, that power extends only to those who are already parties to the arbitration *agreement*. The arbitrator does not have jurisdiction to resolve disputes as to who qualifies as a party to the agreement.

Nonetheless, Zelig's mere objection to the jurisdiction of the arbitral forum does not give him license to ignore it without risk. Until a court actually resolves the issue in his favor, Zelig cannot simply assume he would not be bound by the arbitration's result. Instead, as explained in *Woolls v. Superior Court* (2005) 127 Cal.App.4th 197, 204, footnote 3, a party who makes his jurisdictional objection clear to the arbitrator, may thereafter participate in the proceedings to protect his interests on the merits of the dispute, without waiving that jurisdictional objection. In other words, CTG incurred some risk as well when it decided to proceed in arbitration without advance approval by the court. If the court had later ruled the arbitration agreement did not bind Zelig, CTG would have wasted some significant time and money obtaining its award against him.

And to the extent an arbitrator improperly concludes that someone – such as Zelig – is a party to the arbitration agreement, and is thus bound by the award section 1287.2 provides for a mechanism to redress the situation. That statute gives the court not only the authority, but the obligation, to "dismiss the proceeding under this chapter as to any person named as a respondent *if the court determines* that such person was not bound by the arbitration award and was not a party to the arbitration." (Italics added.) In this case, Zelig did properly seek relief under this statute, making the same arguments he makes on this appeal, and the court denied his motion.

Consequently, Zelig was not without remedies here. To the extent he failed to avail himself of them (such as with his decision to ignore the arbitration proceeding), he cannot blame the "process" for that failure. And to the extent he did, (as with his request for dismissal pursuant to § 1287.2), he is entitled to have the result of that effort reviewed in this appeal.

III

On the merits of the main dispute herein; i.e., whether it was legally proper to hold Zelig individually liable on the retainer agreement entered into with CTG, Zelig makes two seemingly contradictory arguments. On the one hand, he asserts it is clear, as a matter of law, that he entered into CTG's retainer agreement on behalf of a corporation, because (1) the document reflected he was signing in a representative capacity, on behalf of a law firm named "Steve Zelig & Associates," and (2) his law firm was, in fact, a professional legal corporation – albeit one operating under the name "Zelig & Associates, A Professional Legal Corporation." But on the other hand, he asserts that *CTG itself caused* the retainer agreement to be "ambiguous," by failing to clearly reflect the corporate status of the law firm when it drafted the document.

We reject both these arguments, just as the trial court did. As to the first claim, what Zelig fails to acknowledge is that the law firm entity he entered into the contract on behalf of, "Steve Zelig & Associates," is *not* identified in the contract as a corporation. And as CTG points out, law firms which operate in a corporate (or other limited liability) form, are specifically obligated by State Bar Rules to include "wording or abbreviations denoting corporate existence such as 'Professional Corporation', 'Prof. Corp.', 'Corporation', 'Corp.', 'incorporated', or 'Inc.'" in their names. (State Bar Law Corp. Rules, rule IV A (5).) Thus, absent such a specific designation, we see no basis for attributing to CTG's knowledge that the law firm it intended to contract with was a corporation – and thus no basis for concluding it knew Zelig was executing the contract only as an agent of the corporation.

Of course, the true status of the law firm which bore his name was known to Zelig himself, and he also clearly understood his own subjective intentions in signing the agreement. But contracts are not interpreted in accordance with either party's uncommunicated knowledge, nor based upon their subjective intentions. Instead, as explained in *Roth v. Malson* (1998) 67 Cal.App.4th 552, 557, "Contract formation is governed by objective manifestations, not subjective intent of any individual involved. [Citations.] The test is 'what the outward manifestations of consent would lead a reasonable person to believe.' [Citation.]"

In this case, there was no evidence a "reasonable" party in CTG's position would have understood Zelig's law firm actually was incorporated, especially under the somewhat different name of "Zelig & Associates, A Professional Legal Corporation."[5] As far as CTG could determine, the contract was offered to a law firm which was apparently unincorporated, and Zelig signed it on behalf of that apparently unincorporated firm without protest or clarification. We thus reject Zelig's assertion that in signing the CTG agreement, he "was simply signing off a contract for a clearly and unequivocally disclosed principal, i.e., 'Zelig & Associates, A Professional Legal Corporation." Based on the evidence presented in this case, his intention to do that was anything but "clear."

Zelig's other contention, that any ambiguity surrounding the legal effect of his signature on the retainer agreement must be construed against CTG, is similarly unavailing. According to Zelig, to the extent the retainer agreement's identification of his law firm as merely "Steve Zelig & Associates," without specifying its corporate status, supported the inference he had exposed himself to personal liability by signing the

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5 We also agree with the court's implicit conclusion that the mere fact Zelig paid CTG's initial retainer fee with a check drawn on an account in the name of "Zelig & Associates, A Profession Corporation," did not compel the conclusion CTG understood it had actually entered into an agreement with that, somewhat differently named entity, rather than with the "Steve Zelig & Associates" law firm identified in the agreement. As CTG points out, it's not particularly unusual for payments to be made by persons or entities closely related to a contracting party.

agreement, that inference merely rendered the agreement ambiguous – and any such ambiguity must be construed against CTG as the party which drafted the contract. (Citing Civ. Code, § 1654 and *Jackson v. Campbell* (1932) 215 Cal. 103.)

This argument reflects a fundamental misunderstanding of the rule set forth in Civil Code section 1654. That statute does not specify that the party drafting the agreement is necessarily responsible for any ambiguities found therein. What it says is that "[i]n cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against *the party who caused the uncertainty to exist*." (Italics added.) In this case, CTG caused no uncertainty. To the contrary, CTG proffered a contract to a law firm, Steve Zelig and Associates, which was *not* identified as a corporation. Thus, the contract CTG drafted was not ambiguous – the omission of any reference to corporate status in the law firm's name clearly identified Zelig's firm as *non-corporate* under State Bar Rules. The alleged ambiguity arose only because Zelig did not specify a claim of corporate status. Zelig himself knew that "Steve Zelig & Associates," the business identified by CTG as the contracting party in the retainer agreement, either didn't exist, was a separate firm from Zelig & Associates, A Professional Corporation, or was an inaccurate attempt to identify that professional corporation.[6] Because Zelig was in a position to understand the disparity between the law firm as identified in the agreement, and the corporate status of the particular law firm he allegedly intended to contract on behalf of, it was incumbent upon him, rather than CTG, to clarify its terms.

In other words, if Zelig intended his signature on CTG's retainer agreement to bind only the professional corporation named "Zelig & Associates, A Professional Corporation," it was his responsibility to make that limitation clear. Because he failed to

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[6] It's not clear which. According to Zelig, his letterhead at the time reflected that the name of his law firm was "Law Offices of Steven L. Zelig & Associates," an apparently unincorporated entity with yet another slightly different name.

do so, it was he, and not CTG, who caused any resulting "ambiguity" or "uncertainty" in the effect of the executed agreement.

The bulk of Zelig's arguments on the merits assume the conclusion we have just rejected: i.e., that he signed the agreement only on behalf of a disclosed corporate principal, and thus cannot be held liable as an individual. We consequently need not address them, other than to point out this flawed basic premise.

Zelig's final argument on the merits is the contention that CTG is somehow "estopped" from pursuing any judgment against him individually, since it also "attempted to cause the entry of judgment against the corporation – an action wholly inconsistent with the position it [has] now taken." The claim is factually incorrect. Although CTG did *list* both Zelig and Zelig & Associates, A Professional Corporation" (among some others) as respondents in the petition to confirm the arbitration award, it made clear that the arbitrator had issued an award against Zelig only, and that it was seeking to confirm that award as a judgment against Zelig only. Specifically, the petition recites in attachment 10(g), that "Petitioner CTG Forensics, Inc. seeks to have the arbitration award confirmed and judgment entered against Steven L. Zelig, an individual, as set forth in the award of the arbitrator. The other parties have been named because . . . section 1285 provides that all parties named in arbitration must be named in the petition to confirm."

And finally, we acknowledge Zelig's complaint about the legibility of the documents contained in the record. However, while those documents are not models of easy readability, they are a far cry from illegible. They certainly do not provide a sufficient basis for questioning the validity of the judgment.

IV

Finally, Zelig also suggests, in one of the many free-floating comments interspersed within his statement of facts, that the court erred in awarding "an enormous amount of attorney fees including travel expenses [for CTG's attorney whose office is in] San Diego." He claims that it is "inappropriate to blindly award attorneys fees, especially

where a party has gone out of the jurisdiction engaging counsel on a routine matter that could easily [have] been handled by 'local' counsel."

But Zelig makes no effort to develop this contention with either factual analysis or legal authority. He does not cite any evidence demonstrating how much time CTG's counsel spent traveling, or the extent to which CTG's fee request sought recovery for such travel. Nor does he cite any cases discussing the extent to which counsel's travel time may be considered reasonable, or what factors might be relevant in determining whether a party acts reasonably in hiring a particular counsel despite his being "geographically undesirable." Zelig does not even provide us with any portion of the record below, such as the court's minute order, which reveals how the court actually ruled on CTG's fee request.

As explained in *Magic Kitchen LLC v. Good Things International, Ltd.* (2007) 153 Cal.App.4th 1144, 1161-1162, in the absence of such an effort, the contention is waived. (See also *Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1215 ["Contentions are waived when a party fails to support them with reasoned argument and citations to authority"]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].)

That having been said, however, we also note that our record does reflect that when Zelig asserted the same complaint before the trial court, CTG's counsel responded by explaining in a declaration that he had begun his practice in Newport Beach, and continues to serve many clients located in that area. When doing so, he is careful to bill his travel time in the same amounts as would have been incurred if he were continuing to travel to and from Newport Beach. Counsel's conduct in doing so is commendable, while Zelig's apparent decision to ignore that information while reiterating his complaint on appeal is less so.

The judgment is affirmed, and CTG shall recover its costs on appeal.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

O'LEARY, J.